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TO RUEHC/SECSTATE WASHDC PRIORITY 9576
INFO RUCNAFG/AFGHANISTAN COLLECTIVE
RUEHZG/NATO EU COLLECTIVE
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RHEFDIA/DIA WASHDC
RUEKJCS/OSD WASHDC
RUEKJCS/SECDEF WASHDC
RUEKJCS/JOINT STAFF WASHDC//JF/UNMA//
RUEKJCS/JOINT STAFF WASHINGTON DC//J3//
RHMFISS/CDR USCENTCOM MACDILL AFB FL
RHMFISS/HQ USCENTCOM MACDILL AFB FL
RUMICEA/JICCENT MACDILL AFB FL
RHMFIUU/COMSOCCENT MACDILL AFB FL
RUEATRS/DEPT OF TREASURY WASHDC
RUCNDT/USMISSION USUN NEW YORK 2427
RUEHNO/USMISSION USNATO 2624
RUEHGV/USMISSION GENEVA 5829
RUEHUNV/USMISSION UNVIE VIENNA 1268

UNCLAS KABUL 001667

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STATE FOR SCA/FO, SCA/A, L, S/WCI, S/CRS, SCA/PAB, S/CT
OSD FOR DETAINEE AFFAIRS
STATE PASS TO USAID FOR AID/ANE, AID/DCHA/DG
NSC FOR AHARRIMAN, KAMEND
CENTCOM FOR CG CFC-A, CG CJTF-76 POLAND
TREASURY FOR D/S KIMMITT, APARAMESWARAN, AJEWELL
REL NATO/ISAF/AS/NZ
SENSITIVE

E.O. 12958: N/A

TAGS: [MOPS](#) [KAWC](#) [PGOV](#) [AF](#)

SUBJECT: GOA DETAINEES LEGAL WORKING GROUP MOVING AHEAD
WITH DRAFT POLICY DISCUSSIONS

11. (SBU) The Afghan Inter-Ministerial Legal Working Group met on April 5 to discuss the development of a legal framework that would form the basis for transfer of detainees from U.S. custody as well as for the disposition of individuals taken off the battlefield in future. Due to a confusion on the part of the GOA, USG was represented only by the CFC-A,s Staff Judge Advocate, but Embassy will be included in future meetings.

12. (SBU) The Working Group reached consensus that Afghanistan is fact engaged in an internal armed conflict. While this does not appear to be contained in any written document to date, all members of the WG agreed to the assessment. This determination triggers the application of international law, particularly customary law, that U.S. legal experts believe authorizes the GOA to detain enemy combatants until the end of the armed conflict. It gives the GOA the option of holding detainee who cannot be successfully prosecuted due to weak evidence but who should not be released because they still constitute a danger.

13. (SBU) The WG also agreed that Sharia law provides for the detention until the end of the conflict of insurgents who pose a threat to society. Ministry of Interior legal advisor Jabbar Sabit offered to write a paper outlining that legal basis. It was agreed that combining Sharia law justification with international law forms a stronger foundation

for the detention of enemy combatants captured by Coalition, ISAF, or Afghan security forces who are subsequently transferred to the GOA.

14. (SBU) The WG discussed mid-May as the target completion date for a first draft of a GOA policy for conducting detention operations. The group will meet once a week between now and then to focus on preparing the draft. They also requested CFC-A to provide additional technical materials on international law issues that could be used to inform the draft policy document, and CFC-A agreed to make those materials available, in coordination with Embassy's legal experts.
Norland